IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 29701 of 2007(J)

OS.1030/2003 of II ADDL.MUNSIFF COURT, THRISSUR

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PETITIONER:

SHAJI,S/O. KOTTILANGIL VELUKUTTY
CHITTILAPPALLY DESOM,ADATTU VILLAGE,
THRISSUR.

BY ADV. SRI.KRISHNADAS P. NAIR
SRI.HARIDAS P.NAIR
SMT.K.L.SREEKALA
SRI.M.A.VINOD
SRI.M.RAJESH KUMAR

RESPONDENTS:

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1. DHARMAPRIYA FINANCING CO. PVT LTD
IRINJALAKUDA VILLAGE,MUKUNDAPURAM TALUK,
REPRESENTED BY ITS MANAGING DIRECTOR,
VISWAMBHARAN,S/O. MUKULAM, KARUPPAN,
PULLOOR VILLAGE, MADATHIKARA LANE, THRISSUR.

2. MURALEEDHARAN, S/O. PENANGALI KRISHNAN
MINALOOR DESOM, KOLAZHY VILLAGE,
THRISSUR.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.29701 OF 2007

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Dated this the 8th day of October 2007

JUDGMENT

This writ petition is preferred against the order of the II Addl.Munsiff's Court, Thrissur in E.P.No.2319 of 2004 in O.S.No.1030 of 2003. The court by the impugned order had directed issuance of arrest warrant against the second judgment debtor. The evidence which the court had relied on is that the second defendant is not able to say where his wife is employed, that he is aged 36 years and he is not having any disease. I am afraid this evidence will be sufficient to establish the means of a person in order to send him to civil prison under Section 51 of the C.P.C. The learned Munsiff has not applied her mind to the relevant provisions of the C.P.C. and the decisions rendered by this court as well as the Apex Court. Therefore the order under challenge is to be interfered with under Article 227 of the Constitution of India.

Therefore the order under challenge is set aside and the learned Munsiff is directed to reconsider the entire matter afresh after giving sufficient opportunity to all concerned. Since the matter is disposed of at the admission stage itself, the court shall give notice to the decree holder

and then dispose of the matter in accordance with law.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-